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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,717	10/18/2004	David Kempzell	21046-00041-US1	6745

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EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

MAIL DATE	DELIVERY MODE
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09/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/511,717

Applicant(s)

KEMPSELL ET AL.

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 1-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN
PRIMARY EXAMINER

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 23,25-31,33-42,44** are rejected under 35 U.S.C. 103(a) as being unpatentable over Amos (914546).

For claim 23, Amos teaches a saddle tree comprising a tree body 1 having a pommel end (see fig. 6, near ref. 17) and a cantle end (see fig. 6, near ref. 16 right side), the tree body being formed from a flexible material (page 1, left column, line 25, resilient metal) and a generally V-shaped strengthening bar 14 wherein the forks of the V-shape are directed towards the cantle end of the saddle tree. However, Amos's strengthening bar is not Y-shaped. It would have been an obvious substitution of functional equivalent to substitute the V-shaped strengthening bar of Amos with a Y-shaped strengthening bar, since a simple substitution of one known element for another would obtain predictable results, i.e. both shapes of strengthening bar would perform the same function to provide strength and rigidity to the saddle tree. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 25, Amos teaches wherein the pommel end of the saddle tree is angularly adjustable since the material of the saddle tree is resilient metal as disclosed on page 1, left column, line 25.

For claim 26, Amos teaches a head plate 10 located near to the pommel end.

For claim 27, Amos teaches wherein the head plate is malleable (see page 2, lines 14-30).

For claim 28, Amos teaches wherein the head plate is securable in an aperture located in the saddle tree (see fig. 1, the holes where the screws are located therein to attach the plate 10 to the tree).

For claim 29, Amos teaches wherein the head plate is formed integrally within the saddle tree. Integrally is considered as a whole unit.

For claim 30, Amos is silent about the head plate is formed from malleable steel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the head plate of Amos out of a malleable steel, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice. See *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945) and *In re Leshin*, 125 USPQ 416.

For claim 31, Amos teaches two recessed portions, one at either side of the tree near to the pommel end, in which stirrup bars are securable. Recesses are located near ref. 8 in fig. 6.

For claim 33, Amos teaches girth web apertures 9 located at both the pommel and the cantle end.

For claims 34-42,44, Amos teaches a saddle comprising the saddle tree above. It is inherently taught in Amos that the saddle tree is used with a saddle.

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3. **Claim 24** is rejected under 35 U.S.C. 103(a) as being unpatentable over Amos as applied to claim 23 above, and further in view of Swain (6363698).

Amos is silent about the strengthening bar being made from carbon fibre.

Swain teaches a saddle tree comprising a strengthening bar 8 made out of carbon fibre (col. 2, line 40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the strengthening bar of Amos out of carbon fibre as taught by Swain, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice. See *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945) and *In re Leshin*, 125 USPQ 416.

4. **Claims 32 & 43** are rejected under 35 U.S.C. 103(a) as being unpatentable over Amos as applied to claim 23 above, and further in view of Worcester (2130442).

For claim 32, Amos is silent about a sheet of bi-directional carbon fibre applied to at least one of the upper and lower surfaces.

Worcester teaches a sheet 7 of reinforcement made out of iron applied to the upper surface of a saddle tree 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a sheet of reinforcement as taught by Worcester on the upper surface of the saddle tree of Amos in order to strengthen and reinforce the saddle tree.

For claim 43, Amos teaches a saddle comprising the saddle tree above. It is inherently taught in Amos that the saddle tree is used with a saddle.

Response to Arguments

5. Applicant's arguments filed 7/6/07 have been fully considered but they are not persuasive.

Applicant argued that the saddle tree of Amos is to possess "rigidity to prevent undue yielding" and is thus directed to a relatively "rigid" saddle, as stated on page 1, col. 1, lines 24-25. In addition, Applicant argued that though Amos discloses a saddle tree of "resilient metal," Amos further discloses that the character of the metal of the saddle tree should be such that "the tree to possess sufficient rigidity to prevent undue yielding." That is, Amos teaches that limits on the flexibility the saddle tree.

Lines 24-25 do not refer to the saddle being rigid as mentioned by Applicant. Perhaps Applicant meant lines 40-46? In any event, the Examiner believes that Applicant has misread the excerpt lines 40-46 because in these lines, all Amos is saying is that the girth loops and other straps help to hold the tree onto the horse for sufficient rigidity to prevent undue yielding or movement of the saddle while on the horse. The excerpt does not state that the tree material itself is a rigid material. As a matter of fact, the tree is made out of a resilient sheet metal as stated on page 1, lines 25,76-78, which is also acknowledged by Applicant. It appears that Applicant has pieced the excerpts together and came up with Applicant's own conclusion that Amos teaches a rigid material for the tree, but in fact, Amos does not even teach that.

Applicant argued that Amos does not teach a Y-shaped strengthening bar. It is respectfully submitted that the V-shaped two strips 14 disclosed by Amos is

not a strengthening bar. That this is the case is evidenced by the statement in the disclosure of Amos that the intermediate portions of the two strips 14 are: "bowed away from the tree, as shown in Fig. 8, in order to secure the desired spring action." That is, instead of providing "a generally Y-shaped strengthening bar," to the saddle tree as recited in claim 23, Amos discloses a two strips 14 providing a "spring action" to the saddle tree.⁵

It is true that Amos employs strips 14 for spring action, however, the strips can also act as strengthening bar by providing added material on the tree to further reinforce or strengthen the tree. Just because Amos does not call strips 14 strengthening bar does not mean that the strips do not function as such. Any added material to the tree would function to further strengthen the tree since now, instead of having one layer tree, there are multiple layers, hence, making the tree more stronger. In addition, if a fissure is to occur in the tree of Amos, clearly, the strips 14 would serve to hold the tree together or strengthening it by holding the tree together or preventing fissure or the like. Furthermore, the strips 14 of Amos are similar to the bar of Applicant, thus, there is no reason why strips 14 of Amos cannot be called strengthening bar. There is nothing special in the feature of the bar of Applicant to distinguish it from just being any bar.

As for the Y-shaped argument, Applicant did not provide any critical reason as to why the bar has to be Y-shaped, thus, it would have been an obvious substitution of functional equivalent to substitute the V-shaped strengthening bar of Amos with a Y-shaped strengthening bar, since a simple substitution of one known element for another would obtain predictable results, i.e. both shapes of strengthening bar would perform

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the same function to provide strength and rigidity to the saddle tree. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007). In addition, depending on the view of the figures of Amos, one can interpret the strip 14 as being "generally" Y-shaped. For example, in fig. 6, in the area of ref. 16,17, it appears that there is a Y-shaped configuration existing. Just as well, if one was to look at Applicant's drawing from a side view, the bar would appear to be L-shaped and not Y-shaped. Since the claim only states, in general, "a generally Y-shaped strengthening bar", it would be hard to interpret the language in detail, as it is being broadly claimed.

Applicant argued that the flexible connectors 8 disclosed by Swain are not a strengthening bar but indeed "connectors." Further, the connectors are not "generally Y-shaped," as recited in claim 24. Moreover, though Swain discloses the saddle tree 1 includes a pair of steel tie bars 9 to maintain stiffness, these tie bars are not: "formed from flexible material," "generally Y-shaped" or "made from carbon fibre," as recited in claim 24.

Although ref. 8 is considered to be connectors, it, nevertheless, can function as a strengthening bar because it does add strength to the saddle. There is no doubt that connectors 8 add strengths to the saddle. In any event, Swain is cited for a teaching of a known material, carbon fibre, used in the saddle art for whatever reason such as strengthening or reinforcing. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the strengthening bar of Amos out of carbon fibre as taught by Swain, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability

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for the intended use as a matter of obvious choice. See *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945) and *In re Leshin*, 125 USPQ 416. Note that Swain was not relied on for other argued features such as the Y-shaped.

Applicant argued that Worcester nowhere discloses: "a flexible material and a generally Y-shaped strengthening bar." Thus, Worcester cannot overcome all of the deficiencies of Amos. Therefore, it is respectfully submitted that neither Amos nor Worcester, whether taken alone or in combination, does not disclose, suggest or make obvious the limitations of the claimed invention and that claim 32 and 43, and claims dependent thereon, patentably distinguish thereover.

Worcester is not relied on for a flexible material or a Y-shaped strengthening bar. Clearly from the above, Worcester is relied on for a sheet 7 of reinforcement made out of iron applied to the upper surface of a saddle tree 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a sheet of reinforcement as taught by Worcester on the upper surface of the saddle tree of Amos in order to strengthen and reinforce the saddle tree.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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A handwritten signature in black ink, appearing to read 'Son T Nguyen', written in a cursive style.

Son T Nguyen
Primary Examiner
AU 3643